

111TH CONGRESS
1ST SESSION

H. R. 851

To establish executive compensation and corporate governance requirements for institutions receiving assistance under the Troubled Assets Relief Program.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Ms. GIFFORDS introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To establish executive compensation and corporate governance requirements for institutions receiving assistance under the Troubled Assets Relief Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Executive Compensa-
5 tion and Corporate Governance Act of 2009”.

6 **SEC. 2. EXECUTIVE COMPENSATION AND CORPORATE GOV-**
7 **ERNANCE.**

8 (a) IN GENERAL.—Section 111 of the Emergency
9 Economic Stabilization Act of 2008 (12 U.S.C. 5221) is

1 amended by adding at the end the following new sub-
2 sections:

3 “(e) ACROSS-THE-BOARD EXECUTIVE COMPENSA-
4 TION AND CORPORATE GOVERNANCE REQUIREMENTS.—

5 “(1) STANDARDS REQUIRED.—Effective as of
6 the date of the enactment of the Executive Com-
7 pensation and Corporate Governance Act of 2009,
8 and notwithstanding any provision of, and in addi-
9 tion to any requirement of subsection (a), (b), or (c)
10 (other than the definitions in subsection (b)(3)), the
11 Secretary shall require any assisted institution to
12 meet standards for executive compensation and cor-
13 porate governance while any assistance under this
14 title is outstanding.

15 “(2) SPECIFIC REQUIREMENTS.—The standards
16 established under paragraph (1) shall include—

17 “(A) limits on compensation that exclude
18 incentives for senior executive officers of an as-
19 sisted institution which received assistance
20 under this title to take unnecessary and exces-
21 sive risks that threaten the value of such insti-
22 tution during the period that any assistance
23 under this title is outstanding;

24 “(B) a provision for the recovery by such
25 institution of any bonus or incentive compensa-

1 tion paid to a senior executive officer based on
2 statements of earnings, gains, or other criteria
3 that are later found to be materially inaccurate;

4 “(C) a prohibition on such institution mak-
5 ing any golden parachute payment to a senior
6 executive officer during the period that the as-
7 sistance under this title is outstanding;

8 “(D) a prohibition on such institution pay-
9 ing or accruing any bonus or incentive com-
10 pensation, during the period that the assistance
11 under this title is outstanding, to the twenty-
12 five most highly-compensated employees; and

13 “(E) a prohibition on any compensation
14 plan that would encourage manipulation of such
15 institution’s reported earnings to enhance the
16 compensation of any of its employees.

17 “(3) DIVESTITURE.—During the period in
18 which any assistance under this title to any assisted
19 institution is outstanding, the institution may not
20 own or lease any private passenger aircraft, or have
21 any interest in such aircraft, except that such insti-
22 tution shall not be treated as being in violation of
23 this provision with respect to any aircraft or interest
24 in any aircraft that was owned or held by the insti-
25 tution immediately before receiving such assistance,

1 as long as the recipient demonstrates to the satisfac-
2 tion of the Secretary that all reasonable steps are
3 being taken to sell or divest such aircraft or interest.

4 “(4) APPLICABILITY TO PRIOR ASSISTANCE.—
5 Notwithstanding any limitations included in sub-
6 section (a), (b), or (c) with regard to applicability,
7 the Secretary may apply the requirements of and the
8 standards established under this subsection to any
9 assisted institution that received any assistance
10 under this title on or after the date of the enactment
11 of the Executive Compensation and Corporate Gov-
12 ernance Act of 2009.

13 “(f) BOARD OBSERVER.—The Secretary may require
14 the attendance of an observer delegated by the Secretary,
15 on behalf of the Secretary, to attend the meetings of the
16 board of directors of any assisted institution that became
17 an assisted institution on or after October 3, 2008, and
18 any committees of such board of directors, while any as-
19 sistance under this title is outstanding.”.

20 (b) REPEAL OF DE MINIMIS EXCEPTION.—Section
21 111(c) of the Emergency Economic Stabilization Act of
22 2008 (12 U.S.C. 5221(c)) is amended by striking “and
23 only where such purchases per financial institution in the

1 aggregate exceed \$300,000,000 (including direct pur-
2 chases),”.

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